



ID# 11736
SG

JAMES WARREN SMITH JR.

COUNTY ATTORNEY
FRIO COUNTY

February 20, 1991

RQ-35

RECEIVED

FEB 22 91

Texas Attorney General's Office
Supreme Court Building
Austin, Texas 78711-2548

Opinion Committee

Re: Request for Letter Opinion pursuant to V.A.C.S.,
art. 4399

Dear Sir:

In accordance with referenced statute, I am requesting a Letter Opinion concerning the following questions stated below. I will first state the facts, the issues, the applicable law, if any, and my opinion.

FACTS:

Frio County has a juvenile board (see V.T.C.A., Human Resources Code, Section 152.0881) which is composed of the Frio County Judge (a non-lawyer) and the two District Judges for the County, i.e. the 81st and 218th District Courts. The two District Courts geographically include within their districts besides Frio County, the counties of La Salle, Atascosa, Wilson and Karnes.

As Frio County Attorney I prosecute all juvenile cases in the County (Frio County's referral rate on juveniles for the calendar year 1989 was approximately 40% of the total for the district). Often as not at detention hearings held in Frio County the juveniles are ordered detained for 10 days and a great many are detained thereafter at 10-day intervals pursuant to Family Code, Section 54.01(h). The court sets and holds its release hearings after each 10 day interval when one or more of the factors in Section 54.02(b), Family Code are found by the County Judge. On the average there are two to three detention hearings held weekly in juvenile court with several juveniles being brought to juvenile court for each detention hearing (companion cases).

Since the district's juvenile detention center (Atascosa Youth Services Center) is located in Jourdanton, Atascosa County, which is 40 miles from Pearsall. This means that when

Re: Request for Letter Opinion pursuant to V.A.C.S.,
art. 4399

a juvenile is ordered detained some peace officer has to transport the juvenile; and, if the juvenile is female, then an adult female must accompany the officer when transporting. Since juvenile proceedings are civil in nature (See Family Code, Sec. 51.01[3]) unless the juvenile is certified to stand trial as an adult pursuant to Section 54.02 of the Family Code, and since the bailiffs (the Sheriff and Deputy Sheriffs and at times the County Constables) attend each session of our district courts and generally perform those duties normally attendant to that office such as serving process, subpoenas, warrants and writs, Frio County Court sitting as either a criminal, civil or juvenile court has no bailiffs as such.

One Frio County Constable has for many years taken upon himself the responsibility of transporting juveniles to and from the juvenile court and the detention center in Jourdanton; or, if that one is full then to neighboring district's detention centers (Seguin, Del Rio etc.). However, some time back he went before the Frio County Commissioners Court and requested that the Court pass a resolution authorizing me to delegate those duties of transporting the juveniles, and attending to the juveniles while they were in juvenile court on a rotation basis with the other three County Constables.

The three other County Constables took umbrage at this, complained to the Commissioners Court that there were independently elected county officials, that they were not obligated to follow the Court's Orders in this respect, that they could not leave their individual precincts unattended all day while they were engaged in transporting juveniles to and from Court to the juvenile detention center and waiting while the juvenile court held its detention hearing. The Court consequently rescinded its resolution and passed a new resolution stating, in effect, that any Constables who wished to transport juveniles to and from Jourdanton would be paid \$20.00 per round trip for the transportation; and, if the detention center in Jourdanton was filled (as is often the case), then the Constables would be paid at the state rate of \$.205 per mile plus meals for themselves, the juvenile; and, if the juvenile was a female, then also the Court would also authorize payment for the meals for an adult female who would accompany them. All four constables have their mileage included in their salaries and it is so budgeted in that manner.

The bailiff statutes located in V.T.C.A., Government Code, Sections 53.001 et seq. speak only to specific counties and to district courts at that. Nowhere in either the Family

Page 3

Re: Request for Letter Opinion pursuant to V.A.C.S.,
art. 4399

Code, or Mr. David Brooks' excellent volume, West's Texas Practice Series, "County and Special District Law", Chapter 24, "Juveniles," or Mr. Thomas S. Morgan's excellent volume in West's Texas Practice Series, "Juvenile Law and Practice," or in Professor or Dawson's Texas Juvenile Law, Second Edition and 1989 Supplement, have I found any law pertaining to the following questions below.

I did locate a statute, V.T.C.A., Human Resources Code, Section 141.066, "Prohibition on Carrying Firearm," which states that a (juvenile) probation officer cannot carry a firearm in the performance of his duties." Since they are not allowed to carry firearms, it would be dangerous for them if they had to transport juvenile offenders even when the juveniles have hand and leg restraints placed upon them.

FIRST QUESTION:

Who is legally responsible for the transportation of juveniles from the Frio County Court, Sitting as a Juvenile Court, to a detention Center and then back to the Court?

SECOND QUESTION:

Does the Frio County Judge acting in his official capacity as a Juvenile Judge have the authority to order independently elected officials such as the County Sheriff (or his Deputies) or Constables to transport these juveniles and to attend to his court as bailiffs when he is sitting as a Juvenile Judge?

THIRD QUESTION:

Since the monies for travel mileage and expenses for those officers who are willing to transport the juveniles were not budgeted for by the County Commissioners Court when it adopted its budget, is the Commissioners Court in violation of the County Finances statutes as set out in V.T.C.A. Local Government Code, Section 111.001 et seq. and in particular Section 111.041(a), "Expenditure of Funds Under Budget; Transfer of Budget Surplus"? Since the payment of mileage and expenses to those officers willing to transfer juveniles to and from the detention center and juvenile court were not provided for as required in Section 111.036, "Information Furnished by Officers," in establishing the county's budget for its Fiscal Year which began October 1, 1990, is this an illegal expenditure from the County's General Fund?

Page 4

Re: Request for Letter Opinion pursuant to V.A.C.S.,
art. 4399

THE LAW:

As to the first question, I have found no statutes or court opinions concerning whose responsibility it is to transfer juveniles to and from the detention center to County Court, Sitting as a Juvenile Court.

As to the second question, again I have found no law or court opinions whereby county judges are authorized to order an independently elected county official or his deputy to do or not do a particular act.

As to the third question, V.T.C.A., Local Government Code, Section 111.041 limits the Commissioners Courts strictly in the manner in which it spends county funds as authorized by the budget; and when the budget was adopted for Fiscal Year 1991 last year there was no provision for the payment of a straight \$20.00 fee for transportation of juveniles to the detention center in Jourdanton, Texas, or the \$.205 per mile mileage and expenses for meals if the officers transport juveniles to a detention center other than the one in Jourdanton, Texas. The Commissioners Court may well be in violation of these budgetary laws; and, even if the Court was to amend the budget it would have to be in response "to a grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention." (See Section 111.010(a) of Local Government Code.)

MY OPINION:

It would seem to me that the Court could at its next budget preparation sessions for Fiscal Year 1992 which are scheduled for July and August, 1991, appropriate and budget monies and provide for the hiring of a peace officer or officers whose primary duties would be to attend to the Frio County Court when it is sitting as a juvenile court and to transport those juveniles who are ordered to be detained.

Finally, there is a question in my mind that this may be extra compensation and would be violative of Art. III, Section 52 of the Texas Constitution because the officers are being paid extra for what would normally be their duties as bailiffs anyway.

If you need any further information, please do not hesitate to contact me.

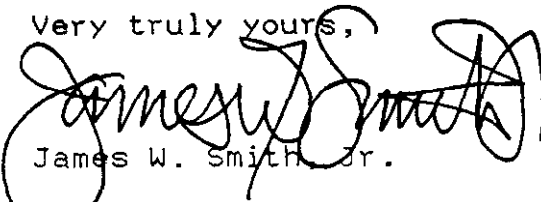
Page 5

Re: Request for Letter Opinion pursuant to V.A.C.S.,
art. 4399

Thanking you in advance for your consideration and any assistance either by a Letter Advisory, a Letter Opinion or Attorney General's Opinion,

I remain,

Very truly yours,



James W. Smith, Jr.

JWSJR/ib

xc: Files

xc: The Hon. Olin Strauss
District Judge
81st Judicial District
P.O. Box 161
Jourdanton, Texas 78026

xc: The Hon. Stella Saxon
District Judge
218th Judicial District
Karnes County Courthouse
Karnes City, Texas 78118

xc: The Hon. Sid Williams, III
Frio County Judge
Frio County Courthouse
Pearsall, Texas 78061

xc: Mr. John Martinez
Chief, Juvenile Probation Officer
711 Broadway
Jourdanton, Texas 78026

xc: Ford and Ferraro, P.C.
ATTN: Mr. David B. Brooks, Esq.
Attorney at Law
San Jacinto Center Town Lake
98 San Jacinto Boulevard
Austin, Texas 78701
FAX: 512-477-5267

CERTIFIED NO. P 116 367 780